UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,921	10/27/2001	Senthil Kumar	REIM-0002	2210

27964 7590 04/06/2007

HITT GAINES P.C.
P.O. BOX 832570
RICHARDSON, TX 75083

EXAMINER	
VAN BRAMER, JOHN W	
ART UNIT	**PAPER NUMBER**
3622	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/06/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/06/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@hittgaines.com

Office Action Summary	Application No.	Applicant(s)	
	10/035,921	KUMAR ET AL.	
	Examiner	Art Unit	
	John Van Bramer	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on December 21, 2006 cancelled no claims. No new claims were added and Claims 1-7, 8, and 15 were amended. Thus, the currently pending claims remain Claims 1-21.

Claim Rejections - 35 USC § 101

2. The 35 USC 101 rejection of Claims 8-14, detailed in the Office Action dated September 22, 2006, is maintained. The Claims are directed towards a method of manufacturing an item. The applicant has provided the component parts that are to be manufactured but no method steps have been provided that describe the method of manufacturing the item. In order to produce a useful, concrete and tangible method of manufacturing an item, the manufacturing steps must be provided. Merely providing of the components needed in the final product will not suffice, without also disclosing the steps of assembling the components. Since there are multiple ways in which an item can be created using its components, it would not be readily apparent to one of ordinary skill in the art what process steps are being claimed in order to manufacture the item.

Claim Rejections - 35 USC § 112

3. The amendment filed on December 21, 2006 has overcome the 35 U.S.C. 112 rejection in the Office Action dated September 22, 2006. Therefore, the examiner hereby withdraws the rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-21 rejected under 35 U.S.C. 103(a) as being unpatentable over Radziewicz et al (U.S. Patent Number: 5,854,897).

Claim 1. Radziewicz discloses a media and advertisement player, comprising:

a. A media player that receives media from a remote system via said computer network and plays said media in response to customer requests. (Col 5, line 43 through Col 6, line 12; and Col 7, line 55 through Col 8, line 15)

b. An advertisement player that receives advertisements and a corresponding advertising schedule from said remote system via said computer network and plays said advertisements according to said advertising schedule. (Col 7, lines 18-54)

c. A tracking subsystem that generates as-run logs containing records of a playing of said media and said advertisements and transmits said as-run logs to said remote system via said computer network. (Col 9, lines 24-41)

While Radziewicz does not specifically state that the said media is selected from the group consisting of: audio music and music videos, he does disclose that audio and video data may be used (Col 9, lines 1-23). The difference between the claimed "audio music and music videos" and the disclosed audio and video data are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have received any type of audio or video data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Claim 2. Radziewicz discloses the media and advertisement player as recited in claim 1 further comprising a display that presents a graphical user interface. (Col 5, lines 22-42)

Claim 3. Radziewicz discloses the media and advertisement player as recited in claim 2 wherein said graphical user interface has a skin that is received from said remote system via said computer network. (Col 5, line 43 through Col 6, line 12)

Claim 4. Radziewicz discloses the media and advertisement player as recited in claim 2 wherein said display is touch-sensitive. (Col 12, lines 23-45)

Claim 5. Radziewicz discloses the media and advertisement player as recited in claim 1 wherein said advertising schedule is dependent upon plays of said media. (Col 23, lines 17-32)

Claim 6. Radziewicz discloses the media and advertisement player as recited in claim 1 further comprising a personal computer, said media and said advertisements being stored on a hard disk drive of said personal computer. (Col 5, lines 7-20; and Col 5, line 43 through Col 6, line 12)

Claim 7. Radziewicz discloses the media and advertisement player as recited in claim 1 wherein said computer network is the Internet. (Col 4, lines 49-67)

Claim 8. Radziewicz discloses a method of manufacturing a media and advertisement player, comprising:

a. Providing a media player subsystem that receives media from a remote system via said computer network and plays said media in response to customer requests. (Col 5, line 43 through Col 6, line 12; and Col 7, line 55 through Col 8, line 15)

b. Providing an advertisement player subsystem that receives advertisements and a corresponding advertising schedule from said remote system via said computer network and plays said advertisements according to said advertising schedule. (Col 7, lines 18-54)

c. Providing a tracking subsystem that generates as-run logs containing records of a playing of said media and said advertisements and transmits said as-run logs to said remote system via said computer network. (Col 9, lines 24-41)

While Radziewicz does not specifically state that the said media is selected from the group consisting of: audio music and music videos, he does disclose that audio and video data may be used (Col 9, lines 1-23). The difference between the claimed "audio music and music videos" and the disclosed audio and video data are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have received any type

of audio or video data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Claim 9. Radziewicz discloses the method as recited in claim 8 wherein said media player subsystem and said advertisement player subsystem employ a display that presents a graphical user interface. (Col 5, lines 22-42)

Claim 10. Radziewicz discloses the method as recited in claim 9 wherein said graphical user interface has a skin that is received from said remote system via said computer network. (Col 5, line 43 through Col 6, line 12)

Claim 11. Radziewicz discloses the method as recited in claim 9 wherein said display is touch-sensitive. (Col 12, lines 23-45)

Claim 12. Radziewicz discloses the method as recited in claim 8 wherein said advertising schedule is dependent upon plays of said media. (Col 23, lines 17-32)

Claim 13. Radziewicz discloses the method as recited in claim 8 further comprising providing a personal computer, said media and said advertisements being storable on a hard disk drive of said personal computer. (Col 5, lines 7-20; and Col 5, line 43 through Col 6, line 12)

Claim 14. Radziewicz discloses the method as recited in claim 8 wherein said computer network is the Internet. (Col 4, lines 49-67)

Claim 15. Radziewicz discloses a method of playing media and advertisements and reporting the playing of the media and advertisements to a remote system, comprising:

a. Receiving media from a remote system via a computer network. (Col 5, line 43 through Col 6, line 12; and Col 7, line 55 through Col 8, line 15)
b. Receiving advertisements and a corresponding advertising schedule from said remote system via said computer network. (Col 7, lines 18-54)
c. Playing said media in response to customer requests. (Col 5, line 43 through Col 6, line 12; and Col 7, line 55 through Col 8, line 15)
d. Playing said advertisements according to said advertising schedule. (Col 7, lines 18-54)
e. Generating as-run logs containing records of a playing of said media and said advertisements. (Col 9, lines 24-41)
f. Transmitting said as-run logs to said remote system via a computer network. (Col 9, line 24 through Col 10, line 29)

While Radziewicz does not specifically state that the said media is selected from the group consisting of: audio music and music videos, he does disclose that audio and video data may be used (Col 9, lines 1-23). The difference between the claimed

"audio music and music videos" and the disclosed audio and video data are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have received any type of audio or video data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Claim 16. Radziewicz discloses the method as recited in claim 15 wherein said customer requests are received via a graphical user interface on a display. (Col 5, lines 22-42)

Claim 17. Radziewicz discloses the method as recited in claim 16 wherein said graphical user interface has a skin, said method further comprising receiving said skin from said remote system via a computer network. (Col 5, line 43 through Col 6, line 12)

Claim 18. Radziewicz discloses the method as recited in claim 16 wherein said

display is touch-sensitive. (Col 12, lines 23-45)

Claim 19. Radziewicz discloses the method as recited in claim 15 wherein said advertising schedule is dependent upon plays of said media. (Col 23, lines 17-32)

Claim 20. Radziewicz discloses the method as recited in claim 15 further comprising storing said media and said advertisements on a hard disk drive of a personal computer. (Col 5, lines 7-20; and Col 5, line 43 through Col 6, line 12)

Claim 21. Radziewicz discloses the method as recited in claim 15 wherein said computer network is the Internet. (Col 4, lines 49-67)

Response to Arguments

6. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection, which were necessitated by amendment. All of the applicant's arguments that were directed towards the newly proposed amendment have been addressed above. The remaining argument is directed towards the applicants definition of the term media which is found in paragraph [0031] of the specification and whether the Radziewicz reference discloses "media". The applicant has defined media to be "audio music, music videos, nonmusic entertainment or non entertainment information such as text, graphics, or computer data" and "informational content or educational content, or

any other content that may be desired to distribute to remote players. The applicant attempts to excluded from this definition "advertisements" which are defined as "pitches for products or services that an advertiser pays to play". The Radziewicz reference specifically discloses the use of media (informational content) in Paragraph 8, lines 16-44.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Van Bramer whose telephone number is

(571) 272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jvb

ERIC W. STAMBER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600